94-1230

NO.

Supreme Court, U.S.
F I L E D
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IN THE

Supreme Court of the United States

October Term, 1994

JACOB FRAIDIN,

Petitioner,

V.

ANDRE' R. WEITZMAN, et al.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI IN THE COURT OF SPECIAL APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

Andre' R. Weitzman, Esq.
8 East Mulberry Street
Baltimore, Maryland 21202
(410) 727-3505
Respondent Pro Se

Patrick A. O'Doherty, Esq.
10 East Baltimore Street
Suite 800
Baltimore, Maryland 21202
(410) 837-1828
Counsel for Respondent
Sheldon H. Braiterman, P.A.

Brief Printing Specialists, Inc., 1001 E. Main Street, Suite 210
Richmond, Virginia 23219, (804) 644-0700

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Is a defendant who has been assessed punitive damages by a jury entitled to have evidence not submitted to the jury considered by a trial judge in a state court proceeding upon a remand to reconsider the defendant's motion for remittitur?

2. Is a defendant who routinely fabricates conflicting financial information under oath entitled to have endless hearings in order to have his conflicting financial evidence considered?

3. Does the award of punitive damages in this case comport with due process where there was evidence of an actual intent to harm accompanied by threats of force and violence?

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In Re Fraidin
United States Bankruptcy Court
for the District of Columbia
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STATEMENT OF THE CASE

The facts of this case are fairly presented in the first opinion of the Court of Special Appeals of Maryland attached to the petition at pages 12a through 47a. The following is a summary of those facts.

On February 13, 1986, respondents Andre' R. Weitzman ("Weitzman") and Sheldon H. Braiterman, P.A. ("Braiterman") (collectively "Weitzman") members of the Maryland Bar, filed a five count complaint against petitioner Jacob Fraidin and his two related companies Pacific Mortgage & Investment Group, Ltd., North American Credit Corporation ("Fraidin"), two law firms that had represented Fraidin, and Ray and Margarette Dorman ("The Dormans"), former clients of Weitzman. The core allegations of the Complaint concerned

malicious interference with contract and conspiracy.

This suit arose from the aftermath of a previous case which resulted in a judgment being entered against Fraidin and his companies. In the prior case, Weitzman represented the Dormans against Fraidin on claims of fraud and violation of State Truth-In- Lending Statutes.

The Dormans had sought out Fraidin, then a licensed mortgage broker, in the hopes of obtaining a bill consolidation loan. Fraidin, acting as the Dormans' broker, arranged a loan for the Dormans with another company (North American) secretly owned by Fraidin. In consummating that mortgage loan Fraidin failed to disclose to the Dormans that the interest rate being charged was 50% per annum and he also

required the Dormans to sign a false statement that the loan was for business or commercial purposes. Six months after receiving net loan proceeds of $8,000.00, the Dormans were forced to repay over $18,000.00 to Fraidin in order to clear the title to their home upon its sale to a third party.

A jury in the Circuit Court for Baltimore County, Maryland, hearing the evidence of the Dormans against Fraidin awarded compensatory damages of $67,000.00 and punitive damages of $300,000.00. During that trial, Fraidin testified that a financial statement that he prepared specifically for trial showed his net worth as of June 30, 1985 to be $393,000.00. During post-trial discovery in aid of execution it was learned by Weitzman that

Fraidin had given a detailed financial statement under oath to the Western Surety Co. swearing to a net worth of $3.125 million also dated as of June 30, 1985. After learning of Weitzman's discovery of this discrepancy in the financial statements, Fraidin commenced a campaign of threats of violence and promises against the Dormans to induce them to discharge Weitzman, deprive him of his fee, and settle directly with Fraidin for $50,000.00 in crisp cash. Fraidin made it a specific condition of settlement that the Dormans discharge Weitzman and not pay him his fee. The Dormans succumbed to Fraidin's threats and inducements and settled directly with Fraidin after presenting written evidence to Fraidin that they had discharged Weitzman. Weitzman then filed suit in this case.

A bifurcated trial commenced on September 18, 1990. At the close of all evidence, the jury was instructed on liability for interference with contract and conspiracy, compensatory damages and liability for punitive damages. On December 20, 1990, the jury, by special verdict, found in favor of Weitzman and Braiterman against Fraidin on Count IV, malicious interference with contract, and awarded separate compensatory damages of $91,737.47 "plus interest" to each. The jury also found that Fraidin acted with actual malice and that punitive damages should be awarded in favor of Weitzman and Braiterman against Fraidin.

On January 16, 1991, the trial continued before the same jury with the reception of evidence on the issue of the

amount, if any, of punitive damages. The evidence of Fraidin's net worth consisted of various statements made under oath by Fraidin to the Western Surety Company which Fraidin admitted were true. These statements placed Fraidin's net worth as of June 30, 1985 at $3.125 million dollars. Fraidin produced no evidence to show that his net worth had diminished since that statement. Although given the opportunity, and under subpoena to do so, Fraidin produced no tax returns for the intervening years, no deeds to real estate, no bank accounts, or other relevant evidence.

On January 18, 1991, the jury awarded punitive damages in favor of Weitzman in the sum of $2,500,000.00 and in favor of Braiterman in the sum of $500,000.00. On January 30, 1991, the court entered judgment

in favor of Weitzman and Braiterman against Fraidin in the sum of $139,842.91 in compensatory damages and $2,500,000.00 in punitive damages, and in favor of Braiterman against Fraidin in the sum of $139,842.81 compensatory damages and $500,000.00 punitive damages.

On May 3, 1991, the court denied the post-trial motions of Fraidin which included a motion for a remittitur of the jury's verdict. On May 15, 1991, Fraidin noted a timely appeal. The Court of Special Appeals of Maryland vacated the punitive damages and remanded the case to the trial judge to reconsider Fraidin's motion for a remittitur because the punitive damage award consumed all of Fraidin's proven net worth, or if the remittitur were rejected by Weitzman, direct a new trial. Fraidin v. Weitzman, 93 Md.

App. at 216, 611 A.2d at 1070. (Appendix to Petition at pages 42a-43a) With the exception of prejudgment interest, the Court of Special Appeals affirmed the remaining judgments. The Court of Appeals of Maryland denied certiorari on January 21, 1993.

The trial court granted Fraidin's motion for remittitur at a hearing held on February 25, 1993, reducing the punitive damage awards by 50%. The Court of Special Appeals affirmed the judgment of the trial court on March 29, 1994. The Court of Appeals of Maryland denied Fraidin's petition for a writ of certiorari on September 14, 1994.

REASONS FOR DENYING THE WRIT

I. Petitioner's Evidence of Net Worth

Rule 15 of this Court directs counsel to point out misstatements of fact and law

so that the Court will not be misled into improvidently granting certiorari. This petitioner is attempting to obtain his Writ by doing exactly what Rule 15 is designed to prevent.

This pro se petitioner has developed a well deserved reputation for dishonesty, particularly when it comes to his finances, which have been noted by State and Federal Courts. Commenting on the petitioner's modus operandi in affirming his felony conviction for theft while acting as a foreclosure trustee, the Court of Special Appeals remarked:

> The permissible picture emerges of Fraidin as an extremely clever manipulator who, if he did not initially have larceny in his heart, at least had avarice in his heart. To feed that avarice, he created at-times labyrinthine confusion. He then sought to exploit that confusion to his own advantage. Although arguably intending to stay carefully within legal limits he would skirt perilously close to the line. If in

such a maneuver he inadvertently stepped out of bounds and the referee blew the whistle on him, it is not the occasion for any great outpouring of sympathy.

Fraidin v. State, 583 A.2d 1065, 1081 (Md. Ct. Spec. App. 1990).

Consistent with this previous disposition for dishonesty, the petitioner highlights to this Court his post-judgment bankruptcy petition under Chapter 11 as the most significant change in his financial position justifying a new evidentiary hearing to determine punitive damages. Recently, the United States Court of Appeals for the Fourth Circuit affirmed the appointment of a Chapter 11 Trustee over the petitioner's case based on a record which supported findings by the Bankruptcy Court that it had "absolutely no confidence in the debtor in terms of his capacity to honestly administer his own Chapter 11

bankruptcy....."

In Re Fraidin, United States Court of Appeals - Fourth Circuit No. 94-1658. (Slip opinion attached hereto as appendix to Reply Brief at page 1a-4a)

In addition to the felony conviction, the appointment of a trustee was supported by the petitioner's undisclosed use of aliases and his "evasive, self-serving, unclear, and obviously not forthcoming" testimony before the Bankruptcy Court. (Appendix to Brief, 2a. Slip Opinion In Re Fraidin at page 2)

What was not discussed by the panel of the Fourth Circuit but which appears in the record of that case is that the petitioner was making secret direct payments to the Court appointed examiner who was forced to resign. (Appendix to Brief, 7a,

portions of Transcript December 16, 1993 pages 90-94, U.S. Bankruptcy Ct. for the Dist. of Md.) This examiner is the same person whom the petitioner argues at page 13 of his petition should have been allowed to testify after the remand from the Court of Special Appeals. (See also, Appendix to Petition, page 59a)

In the proceedings below all evidence of the petitioner's net worth came from documents that he created and signed under oath. As the trial judge noted:

> When it was convenient for Mr. Fraidin to have a low net worth he could produce documentation to that effect, and when it was convenient to have a substantial net worth, he could produce documentation to that effect
> (Appendix to Petition at page 90a)

The State Appellate Court in Fraidin I and II reviewed the conflicting evidencing of net worth carefully and concluded that it

was a matter for the jury. The Petitioner's argument now is that due process should give him one more chance to convince people of his true net worth, now that his unfavorable versions of net worth were apparently accepted.

The Petitioner had a full and fair opportunity to present evidence of his net worth to the jury. Instead of presenting bank accounts, business records and tax returns, he relied on fabricated documents showing amounts and transactions which could not be independently verified.

Even the Petitioner's schedules in bankruptcy show that the evidence he offered at trial must have grossly understated his net worth. At trial, the Petitioner offered self-created financial statement showing a net worth of $250,000.00. (Appendix to

Petition 37a) Nine months later when the Petitioner filed his schedules in his bankruptcy case, his net worth (exclusive of this judgment) was at least $800,000.00. (Appendix to Brief 15a)

II. The Maryland Practice of Remittitur Complies with Due Process

Under existing Maryland law, a trial judge deciding whether to grant a remittitur is precluded from considering matters not placed before the jury. This is consistent with federal law, which the Maryland Courts look to for guidance. See, Banegura v. Taylor, 312 Md. 609, 612, 541 A.2d 969, 976 (1990).

The practice of remittitur does not violate due process. In exercising its discretion to grant a motion for new trial and permitting the plaintiff the alternative of a remittitur, the trial court is

reviewing the amount of a judgment for an error of law, not a question of fact. See, McKennon v. City of Berwyn, 750 F.2d 1383, 1392 (7th Cir. 1984). The trial court, finding that a verdict is excessive, must: (1) direct the plaintiff to remit only that portion of the verdict which constitutes error of law, and (2) allow plaintiff the option of a new trial to preserve his constitutional right to a jury trial. See, Earl v. Bouchard Transp. Co., Inc., 917 F.2d 1320, 1327-29 (2nd Cir. 1990). See also, K-B Trucking Co. v. Riss Intern. Corp., 763 F.2d 1148, 1662-63 (10th Cir. 1985). Lastly, to make a determination of the amount to be remitted, only the evidence presented at trial can be considered. See, Marshall v. El Paso Natural Gas Co., 874 F.2d 1373, 1384 (10th Cir. 1989). ("The

district court is without discretion to reduce or eliminate punitive damages on the basis of events occurring after the trial.")

The remand to the trial court for reconsideration of the petitioner's motion for remittitur did not entitle the petitioner to a new evidentiary hearing. Unhappy with his success on his motion for remittitur, the petitioner now represents the record as being devoid of such a motion, although that is clearly not the case. (See Appendix to Petition, page 6a, note 3)

The hearing to reconsider the motion for remittitur was not a new assessment of punitive damages. The only matter before the trial court on remand was to correct the jury's verdict based on an error of law. That was precisely the relief requested by the Petitioner in his motion, and in his

first appeal. Due process does not require a new evidentiary hearing in this instance.

III. The Award of Punitive Damages does not Violate Due Process Under the Facts of this Case

This Court has never held that due process requires some sort of precise ratio between compensatory and punitive damages, or between punitive damages and a defendant's net worth. Of the three due process components identified in Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1 (1991), the petitioner argues only that the third component, the size of the award, violates due process.

The facts of this case justify a substantial award of punitive damages. The petitioner acted with a very high degree of malice towards Weitzman and displayed utter contempt for our system of justice.

If the Court were to grant certiorari on this issue then its role in this case would be one of simply playing super-jury, substituting its judgment for that of the actual jury in weighing the relative value of conduct worthy of punitive damages. This would require all appellate courts to then review each award of punitive damages and make its own decision of whether a remittitur should be granted on appeal regardless of existing standards for reviewing the decisions of juries and trial courts. This type of appellate review of factual findings based solely on a dry record is contrary to longstanding appellate jurisprudence in this country that prefers factual determinations to be made by triers of fact who have had the opportunity to hear and observe the witnesses.

A judicially imposed ratio limiting awards of punitive damages would defeat the main purpose of punitive damages. An award of punitive damages should reflect many factors, including the type of conduct, the degree of malice, the relative positions of the parties, the harm suffered, and the defendant's ability to pay. To set a precise ratio would reduce punitive damages to simply another cost of doing business, which if low enough relative to the anticipated gain, may be ineffective to deter wrongful conduct.

IV. Maryland Law on Tortious Interference with Contract is not Reviewable by This Court Under the Facts of This Case

The petitioner completely misreads and misrepresents the case of Alexander & Alexander v. B. Dixon Evander & Associates Inc., 336 Md. 635, 650 A.2d 260 (1994) cited

in support of his supplemental petition.

Initially, whether particular conduct constitutes tortious interference with contract under State law raises no issue reviewable by this court, absent any element of free speech, interstate commerce or other federal issue. The Alexander case does not contain even a hint of any federal issue, nor does the petitioner's case.

Apart from the lack of any substantial federal issue in considering whether the petitioner's conduct is sanctionable under State law, there was ample evidence in the record to support the jury's finding that the petitioner committed tortious interference with contract motivated by actual malice. Fraidin v. Weitzman, supra, 93 Md. App. at 202-05. (Appendix to Petition at pages 28a-29a)

CONCLUSION

For the aforegoing reasons the respondents request that the petition be denied, with costs.

Andre R. Weitzman, Esq.
8 East Mulberry Street
Baltimore, Maryland 21202
(410) 727-3505
Respondent Pro Se

Patrick A. O'Doherty, Esq.
10 East Baltimore Street
Suite 800
Baltimore, Maryland 21202
(410) 837-1828
Counsel for Respondent
Sheldon H. Braiterman, P.A.

NO.

IN THE

Supreme Court of the United States

October Term, 1994

JACOB FRAIDIN,

Petitioner,

V.

ANDRE' R. WEITZMAN, et al.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI IN THE COURT OF SPECIAL APPEALS OF MARYLAND

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

Andre' R. Weitzman, Esq.
8 East Mulberry Street
Baltimore, Maryland 21202
(410) 727-3505
Respondent Pro Se

Patrick A. O'Doherty, Esq.
10 East Baltimore Street
Suite 800
Baltimore, Maryland 21202
(410) 837-1828
Counsel for Respondent
Sheldon H. Braiterman, P.A.

Brief Printing Specialists, Inc., 1001 E. Main Street, Suite 210
Richmond, Virginia 23219, (804) 644-0700

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In Re: JACOB FRAIDIN,
Debtor.

JACOB FRAIDIN,
Plaintiff-Appellant,
v.
ANDRE WEITZMAN; SHELDON H. BRAITERMAN,
Defendants-Appellees.

No. 94-1658

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
J. Frederick Motz, District Judge.
(CA-94-352-JFM, BK-91-857)

Argued: November 3, 1994

Decided: December 9, 1994

Before RUSSELL, WILKINS, and HAMILTON,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Janet Marsha Nesse, GINS & SEEBER, P.C., Washington, D.C., for Appellant. Andre R. Weitzman, Baltimore, Maryland,

for Appellees. **ON BRIEF:** Sheldon H. Braiterman, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Jacob Fraidin appeals the decision of the district court upholding the appointment of a Chapter 11 trustee by the bankruptcy court. Because we conclude that the appointment of a trustee was not an abuse of discretion, we affirm.

I.

After Fraidin filed for protection under Chapter 11 of the Bankruptcy Code, two creditors with outstanding judgments against Fraidin moved for the appointment of a trustee. At the conclusion of a two-day hearing, the bankruptcy court stated that it was appointing a trustee because it had "absolutely no confidence in the debtor in terms of his capacity to honestly administer his own Chapter 11 bankruptcy."

The bankruptcy court based its decision on what it called "a multitude of factors," one of which was pre-petition dishonesty. Fraidin is a convicted felon, having been found guilty of theft while acting as a foreclosure trustee. *See Fraidin v. State*, 583 A.2d 1065 (Md. Ct. Spec. App.), *cert. denied*, 589 A.2d 57 (Md. 1991).* More recently,

---

*The Maryland Court of Special Appeals wrote: "The permissible picture emerges of Fraidin as an extremely clever manipulator of complicated commercial transactions who . . . at least had avarice in his heart. To feed that avarice, he created at-times labyrinthine confusion. He then sought to exploit that confusion to his own advantage." *Fraidin*, 583 A.2d at 1081.

Fraidin was found liable in a civil action for tortious interference with contract and civil conspiracy and was ordered to pay $1.5 million in punitive damages. Also, the bankruptcy judge found that Fraidin had used aliases as late as 1986, but did not disclose those names as required on the bankruptcy petition. Moreover, the bankruptcy court found that Fraidin had no credibility, given his "evasive, self-serving, unclear, and obviously not forthcoming" testimony during the hearing.

II.

The appointment of a trustee is provided for in 11 U.S.C.A. § 1104(a) (West 1993):

> [O]n request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case . . . ; or
>
> (2) if such appointment is in the interests of creditors.

Since the Bankruptcy Code favors allowing a debtor in possession to continue managing its business operations, the appointment of a trustee in a Chapter 11 case is an extraordinary remedy; it "is the exception rather than the rule." *In re U.S. Communications of Westchester, Inc.*, 123 B.R. 491, 495 (Bankr. S.D.N.Y. 1991).

The decision of whether a debtor's conduct justifies the appointment of a trustee is a matter committed to the discretion of the lower courts. *See Committee of Dalkon Shield Claimants v. A.H. Robins Co.*, 828 F.2d 239, 242 (4th Cir. 1987). Here, the decision was made in the first instance by the bankruptcy court and affirmed by the district court. This court, as a second court of review, considers the decision of the bankruptcy court under the same standards that apply to the district court. *Brown v. Pennsylvania State Employees Credit*

Union, 851 F.2d 81, 84 (3d Cir. 1988). Thus, the question here is not whether this court would have appointed a trustee had it been deciding the question in the first instance, but whether the bankruptcy court abused its discretion in appointing a trustee. Findings of fact by the bankruptcy court are reviewable by this court only for clear error and legal questions are subject to de novo review. *Canal Corp. v. Finnman (In re Johnson)*, 960 F.2d 396, 399 (4th Cir. 1992); Bankr. R. 8013.

Fraidin argues that the evidence was insufficient to support the appointment of a trustee, noting that he was not delinquent in any filings related to his bankruptcy case and that no evidence was presented that he was engaged in any improper conduct at the time the hearing was held. Thus, he claims, the appointment was improper.

We conclude that the findings of the bankruptcy court—that Fraidin had engaged in a prolonged pattern of dishonest conduct and had no credibility at the hearing—are supported by the record. Section 1104(a)(1) expressly provides that dishonesty, whether before or after the filing of the bankruptcy petition, justifies the appointment of a trustee. The bankruptcy court considered Fraidin's evidence of his proper conduct regarding his bankruptcy case, but nonetheless found that his pattern of dishonesty justified the appointment of a trustee. We find no abuse of discretion and accordingly affirm the order of the district court.

AFFIRMED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	Case No. 92-5-2338-JS
	*	(Chapter 11)
JACOB FRAIDIN	*	
	*	
Debtor	*	
**********		
ANDRE' R. WEITZMAN	*	Advers. No.92-5210-JS
SHELDON H. BRAITERMAN,	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
JACOB FRAIDIN,	*	101 W. Lombard Street
	*	Baltimore, MD 21201
Defendant.	*	December 16, 1993
	*	2:20 P.M.
**********		

TRANSCRIPT OF HEARING ON MOTION FOR APPOINTMENT OF TRUSTEE AND MOTION TO STRIKE ORDER OF DISMISSAL BEFORE THE HONORABLE JAMES F. SCHNEIDER UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: JANET M. NESSE, ESQUIRE
2021 L Street, N.W.
Suite 200
Washington, DC 20036

For Sheldon H. Braiterman: SHELDON H. BRAITERMAN, PRO SE
33 S. Charles St., 4th Fl.
Baltimore, MD 21201

For Andre' R. Weitzman: ANDRE' R. WEITZMAN, PRO SE
8 East Mulberry Street
Baltimore, MD 21202

For the U.S. Trustee: KAREN MOORE, ESQUIRE
300 W. Pratt Street
Baltimore, MD 21201

Audio Operator: NANCY WALKER

Transcription Service: MONIQUE E. GIBSON
M.E.G. TYPING &
TRANSCRIPTION

THE COURT: THANK YOU. I'M GOING TO APPOINT A TRUSTEE. I HAVE ABSOLUTELY NO CONFIDENCE IN THE DEBTOR IN TERMS OF HIS CAPACITY TO HONESTLY ADMINISTER HIS OWN CHAPTER 11 BANKRUPTCY, AND THAT IS BASICALLY THE REASON FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE UNDER THE TERMS REQUIRED BY THE BANKRUPTCY CODE.

NOW, THERE ISN'T JUST ONE FACTOR THAT THE COURT COULD POINT TO TO JUSTIFY THE APPOINTMENT OF A TRUSTEE. THERE ARE A MULTITUDE OF FACTORS AND THEY ALL WEIGH AGAINST MR. FRAIDIN. THE FIRST FACTOR IS THAT BASICALLY HE IS OPERATING WHAT AMOUNTS TO A CORRUPT BUSINESS. HE'S A LOAN SHARK. THE BUSINESS IS A CORRUPT PRACTICE THAT HAS BEEN SANCTIONED ANY NUMBER OF TIMES IN CIVIL JUDGMENTS AND IN ADMINISTRATIVE SANCTIONS. THE REASON THE CASE WAS FILED IS BECAUSE OF

THE PUNITIVE DAMAGES THAT WERE ASSESSED AGAINST HIM FOR WHAT HE WAS DOING. THE CODE SPEAKS OF PRE-PETITION DISHONESTY AS ONE BASIS FOR APPOINTING A TRUSTEE, AND I THINK THERE'S AMPLE EVIDENCE OF JUST SUCH PRE-PETITION DISHONESTY, IF NOT OUTRIGHT FRAUD. AND I'M NOT NECESSARILY BASING THIS ON HIS CRIMINAL CONVICTION, BUT ON THE ENTIRE BACKGROUND THAT IS PRESENTED IN THIS CASE.

MR. FRAIDIN HAS DEMONSTRATED IN THE PAST THAT AN EXAMINER IS INEFFECTUAL IN GETTING TO THE BOTTOM OF WHAT IS GOING ON IN HIS CASE. MR. WOLFSON MAY HAVE BEEN AN OBJECTIVE PERSON WHEN HE WAS APPOINTED, BUT HE WAS PAID BY MR. FRAIDIN DIRECTLY, IMPROPERLY, AND NOT PURSUANT TO COURT ORDER. AS FAR AS I'M CONCERNED, WHATEVER MR. WOLFSON'S QUALIFICATIONS AND WHATEVER MR. WOLFSON'S ABILITY, THAT FACT ABSOLUTELY

NEUTRALIZED WHATEVER OBJECTIVITY HE MIGHT HAVE HAD.

NOW, IT IS OBVIOUS TO ME THAT THE MOVANT OR MOVANTS ON THE MOTION FOR THE APPOINTMENT OF THE TRUSTEE ARE OBVIOUSLY AT ODDS WITH MR. FRAIDIN BECAUSE THEY WERE THE INDIVIDUALS WHO ARE IN LITIGATION WITH THEM, BUT THEY HAVE POINTED TO ENOUGH INSTANCES THAT INDICATE TO THE COURT THAT THERE IS A BASIS FOR THE APPOINTMENT OF A TRUSTEE. IN SOME RESPECTS, THE APPOINTMENT OF A TRUSTEE IS IN MR. FRAIDIN'S INTEREST TO CLEAR THE AIR AND TO ENSURE THAT FUTURE ACTIVITIES OF HIS WILL BE UNDER THE SCRUTINY OF A TRUSTEE WHO WILL BE IN CONTROL OF THE BANKRUPTCY CASE.

MR. FRAIDIN'S OWN TESTIMONY OVER TWO DIFFERENT DAYS IN THIS COURT HAS CONVINCED ME THAT HIS CREDIBILITY IS NIL. AND I'M NOT

NECESSARILY SAYING THAT HE HAD TO BE A NICE PERSON ON THE WITNESS STAND AND THAT HE WASN'T BECAUSE I UNDERSTAND THAT HE'S BEING QUESTIONED BY ADVERSE PARTIES WHO HAVE BEEN IN LITIGATION WITH HIM. BUT HIS TESTIMONY WAS DURING MOST OF IT WAS EVASIVE, SELF-SERVING, UNCLEAR, AND OBVIOUSLY NOT FORTHCOMING. HE'S BEEN KNOWN IN THE COMMUNITY, HE SAYS, BY DIFFERENT NAMES. THOSE NAMES HAVE NOT BEEN DISCLOSED IN THE BANKRUPTCY PETITION THAT HE FILED. HE SAYS THAT AS LATE AS 1986 HE WAS KNOWN IN THE COMMUNITY AS IRV JACOBS. WHERE IS THAT IN THE PETITION? IT'S NOT IN THERE ANYWHERE.

I CAN'T IMAGINE A CASE THAT CRIES OUT FOR A CHAPTER 11 TRUSTEE MORE THAN THIS ONE, IF ONLY TO MAKE SURE THAT THE PUBLIC WILL BE PROTECTED IN THE OPERATION OF THIS MAN'S BUSINESS. THIS IS THE ONE CHANCE POSSIBLY

THAT SOCIETY HAS TO PROTECT ITSELF AGAINST MR. FRAIDIN'S MISCONDUCT AND OFTTIMES QUESTIONABLE PRACTICES AS A BUSINESS PERSON.

THERE IS SUFFICIENT EVIDENCE IN THIS CASE, OVERWHELMING EVIDENCE, TO SUPPORT THE APPOINTMENT OF A TRUSTEE. THIS MAN IS FUNCTIONING AS A DEBTOR-IN-POSSESSION UNDER THE AEGIS OF THE BANKRUPTCY COURT. THE BANKRUPTCY COURT, FOR ITS OWN PROTECTION, OUGHT TO BE ABLE TO APPOINT A TRUSTEE IN QUESTIONABLE CASES LIKE THIS TO MAKE SURE THAT THE PUBLIC PERCEPTION OF THE PROCESS IS BEYOND CRITICISM. AND IF I DIDN'T APPOINT A TRUSTEE, I THINK THAT I WOULD BE JEOPARDIZING THE REPUTATION OF THE COURT FOR MAKING SURE THAT THE LAWS OF THIS CITY, STATE, AND NATION ARE PRESERVED AGAINST THE PRACTICES OF DEBTORS WHO ARE OPERATING UNDER THE PROTECTION OF THE BANKRUPTCY COURT.

SO THERE ARE A NUMBER OF REASONS FOR THE APPOINTMENT OF A TRUSTEE. I DON'T GET TO PICK WHO THAT PERSON WILL BE. THE U.S. TRUSTEE WILL DO THAT, BUT I WILL ORDER THAT A TRUSTEE IN CHAPTER 11 BE APPOINTED. AND I WOULD HOPE THAT, MS. MOORE, SOMEBODY WHO IS SOPHISTICATED AND EXTREMELY COMPETENT IN BUSINESS AFFAIRS WOULD BE THE PERSON THAT WOULD BE SELECTED, BUT AS TO WHO THAT PERSON IS, OBVIOUSLY THAT IS STRICTLY WITHIN THE PROVINCE OF YOUR OFFICE.

I HAVE NOTHING SPECIFIC TO COMPLAIN ABOUT MR. WOLFSON, BUT I DON'T THINK THAT AN EXAMINER, WHOEVER IT MIGHT BE, WOULD BE THE PROPER ROUTE TO FOLLOW IN THIS CASE BECAUSE AN EXAMINER IS NOT CLOTHED WITH THE POWERS OF A TRUSTEE. THE EXAMINER HAS LIMITED AUTHORITY TO INVESTIGATE EVENTS AND CONDUCT OF PARTIES. A TRUSTEE, ON THE OTHER HAND,

HAS SIGNIFICANT AUTHORITY TO GO BEYOND MERE INVESTIGATION AND TO INVOKE THE JURISDICTION OF THE COURT TO TAKE SOME ACTION, EITHER AGAINST THE DEBTOR OR AGAINST OTHERS ACTING EITHER IN CONCERT WITH THE DEBTOR OR AGAINST THE DEBTOR. THE TRUSTEE HAS THAT POWER. BUT THE TRUSTEE IS AN OBJECTIVE PERSON ACTING ON BEHALF OF CREDITORS, WHICH IS SOMETHING THAT THIS CASE HAS BEEN SORELY LACKING SINCE IT WAS FILED IN THE DISTRICT OF COLUMBIA.

SO, IN A NUTSHELL, THAT'S THE REASON TO APPOINT A TRUSTEE. AND, MS. MOORE, I WOULD HOPE THAT ALSO THAT THAT WOULD BE DONE FORTHWITH.

MS. MOORE: YES, YOUR HONOR. WE WILL CONSULT WITH THE PARTIES AND MAKE THE APPOINTMENT AND FILE THE APPROPRIATE PLEADINGS WITH YOUR HONOR AS QUICKLY AS

POSSIBLE.

THE COURT: I WOULD PREFER NOT TO RULE ON THIS OTHER MATTER PENDING THE APPOINTMENT OF A TRUSTEE, MR. WEITZMAN. ON THAT DISMISSAL, I WOULD LIKE TO SEE WHAT A TRUSTEE DOES FIRST. IT MAY MAKE EVERYTHING ELSE MOOT.

MR. WEITZMAN: THANK YOU.

THE COURT: THANK YOU ALL. GOOD LUCK TO YOU.

ALL: THANK YOU, YOUR HONOR.

THE CLERK: ALL RISE. THIS HONORABLE COURT NOW STANDS ADJOURNED.

(WHEREUPON, THE PROCEEDINGS ADJOURNED AT 4:50 P.M.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

_____ _____

MONTIQUE E. GIBSON
M.E.G. TYPING AND
TRANSCRIPTION

DATE

In re: Jacob Braidin

Case No: 91-00617

CLIENT'S COPY

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF COLUMBIA

SUMMARY OF SCHEDULES

Schedule name	No. Sheets	Assets	Liabilities	Other
X (mark if attached)				
___ A - Real Property	2	420,000.00		
___ B - Personal Property	13	743,618.26		
___ C - Property Claimed as Exempt	11			
___ D - Creditors Holding Secured Claims	1		272,315.00	
___ E - Creditors Holding Unsecured Priority Claims	3		6,433.00	
___ F - Creditors Holding Unsecured Non-priority Claims	6		3,628,538.00	
___ G - Executory Contracts and Unexpired Leases	1			
___ H - Codebtors	2			
___ I - Current Income of Individual Debtors	2			7,000.00
___ J - Current Expenditures of Individual Debtors	3			6,289.00
Summary Sheet	1	**********	**********	
Total No. Sheets	45	**********	**********	
Total Assets ->		1,163,618.26	**********	
Total Liabilities ->			3,907,286.00	********
Total No. of Creditors ->			34	********
Excess Income (if any) ->				711.00